



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Improvement Agreement and Improvement Deferral Agreement for Lodi Retirement Residence, 2145 West Kettleman Lane

**MEETING DATE:** October 15, 1997

**PREPARED BY:** Public Works Director

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**RECOMMENDED ACTION:** That the City Council take the following action with regard to the Lodi Retirement Residence:

1. Direct the City Manager and City Clerk to execute the improvement agreement and improvement deferral agreement on behalf of the City.
2. Appropriate funds for necessary reimbursements.

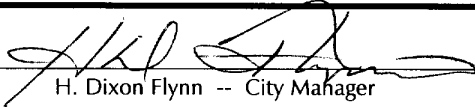
**BACKGROUND INFORMATION:** This development is located on the north side of Kettleman Lane and east of the Lodi Town Plaza (Target) Shopping Center as shown on the attached Exhibit A. The development consists of a 117 private-room retirement complex on a 3.75 acre lot. The development will provide full-service retirement housing for ambulatory senior citizens.

Lodi Retirement Residence Limited Liability Company, developer of the Lodi Retirement Residence, has furnished the City with improvement plans, necessary agreements, guarantees, insurance certificates, and fees for the proposed development. The Development Impact Mitigation Fees have been paid.

In conformance with LMC §16.40, Reimbursements for Construction, the developer is entitled to reimbursement for an oversize master plan water main (\$3,015.48), a major water main crossing (\$11,181.94), and excess width street improvements in Kettleman Lane (\$22,783.80) installed with the Lodi Retirement Residence development. The reimbursement for excess street width improvements includes \$8,970.00 for engineering design fees for street frontage improvements for the properties west of the subject site and east of the Lodi Town Plaza shopping center.

At the outset of this project, staff contacted the adjacent property owners (First Church of the Nazarene and the Dunscombe family) in an attempt to complete the frontage improvements on Kettleman Lane between the project site and the shopping center in conjunction with the retirement residence project. The City obtained the necessary right-of-way for the Dunscombe parcel during recent negotiations for the purchase of the northerly portion of their property. However, acquisition of right-of-way (19 feet) was necessary on the church parcel. City staff and the project design engineer, Dillon & Murphy, held discussions with church representatives and the church pastor regarding the possibility of exchanging the dedication of the right-of-way for the installation of the street improvements. Initial discussions were favorable and the project design engineer included the Kettleman Lane street improvement design for the adjacent parcels in the plans for the retirement residence. During the following months, a new pastor was assigned to the church and, when the agreement setting forth the terms of the exchange

APPROVED:

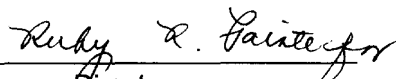
  
H. Dixon Flynn -- City Manager

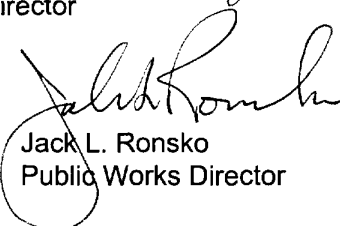
was presented to the church's board of directors, they came forward with a list of new, economically prohibitive demands to be added to the conditions for the exchange. Copies of the agreement and the church's response are attached as Exhibits B and C, respectively. Staff made several unsuccessful attempts to resolve the situation and completion of the frontage improvements on the adjacent properties with the retirement residence project was ultimately abandoned. If the church undertakes any major improvement project on their site in the future, dedication of the necessary right-of-way on Kettleman Lane and Tienda Drive as well as installation of street improvements for both street frontages will be required at their expense as a condition of the project in conformance with LMC §15.44, Off-Site Improvements and Dedications. All applicable fees including, but not limited to, development impact mitigation fees and sanitary sewer lift station fees will also be collected at that time. The engineering and plan preparation for the Kettleman Lane street improvement work had already been completed by the project design engineer prior to abandonment of staff's efforts to provide orderly development along Kettleman Lane. The engineer has provided the City with the improvement plans and autocad file for this work which could be of use at some future date to accomplish the work. Staff recommends that the developer be reimbursed for the engineering fees for this design work.

FUNDING: Funding will be provided from the following sources:

1. Development Impact Mitigation Fees - Water Facilities	\$14,197.42
2. Development Impact Mitigation Fees - Regional Streets	<u>\$22,783.80</u>
Total	\$36,981.22

Funding Available:

  
Finance Director

  
Jack L. Ronsko  
Public Works Director

Prepared by Sharon Welch, Associate Civil Engineer

JLR/SAW/lm

Attachments

cc: Senior Civil Engineer  
Associate Civil Engineer - Development Services  
Associate Civil Engineer Chang  
Lodi Retirement Residence Limited Liability Company  
Fountainhead  
Dillon & Murphy  
First Church of the Nazarene

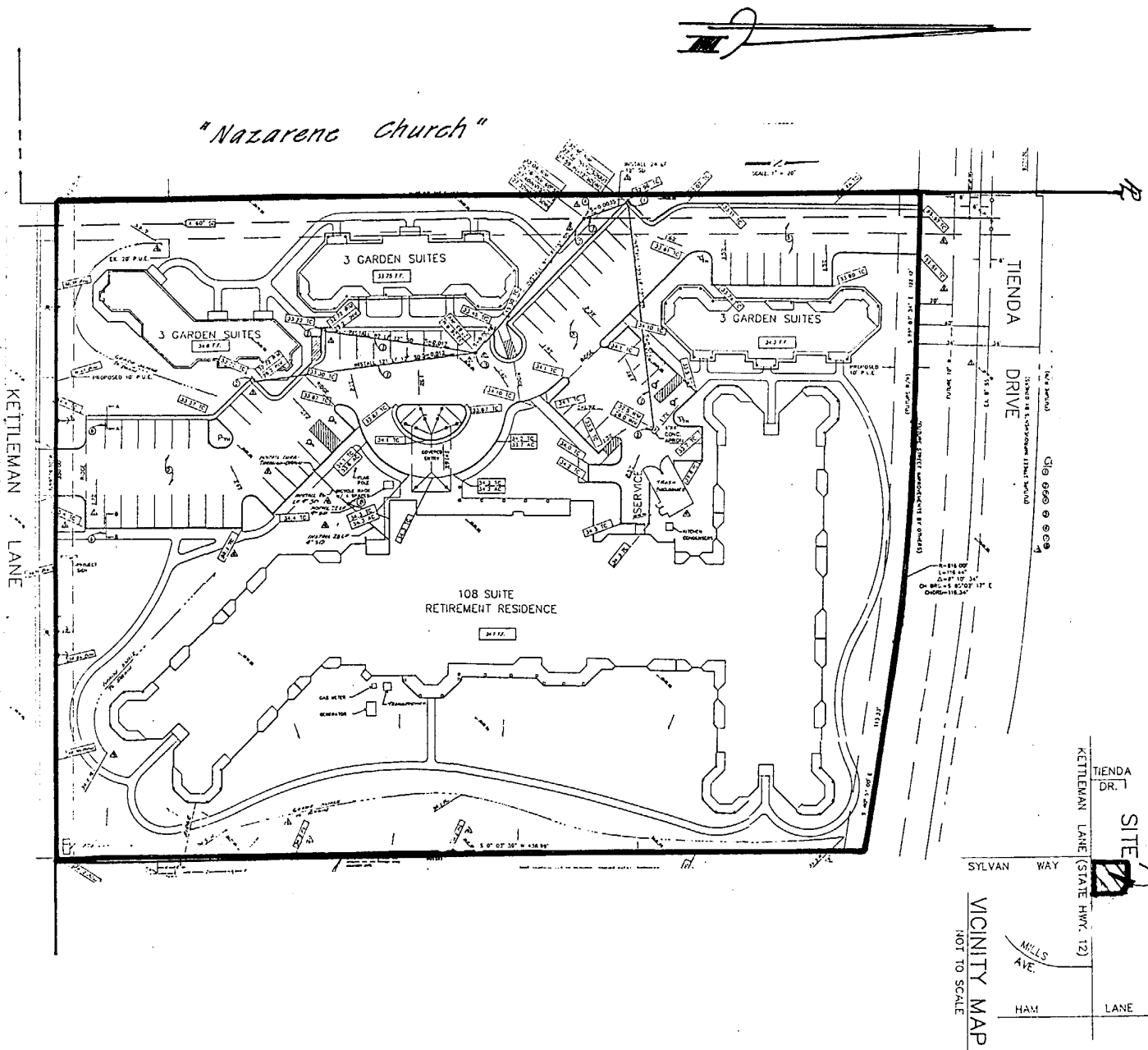


# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## EXHIBIT A

2145 WEST KETTLEMAN LANE



## EXHIBIT B

### CITY COUNCIL

PHILLIP A. PENNINO, Mayor  
JACK A. SIEGLOCK  
Mayor Pro Tempore  
KEITH LAND  
STEPHEN J. MANN  
DAVID P. WARNER

## CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6706  
FAX (209) 333-6710

H. DIXON FLYNN  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
RANDALL A. HAYS  
City Attorney

January 17, 1997

Mr. Steve Benjestorf  
First Church of Nazarene  
2223 W. Kettleman Lane  
Lodi, California 95242

SUBJECT: Street Improvements  
Tienda Drive and Kettleman Lane

In September 1996, Richard Prima, City Engineer, and Sharon Welch, Associate Civil Engineer, from our office and Cecil Dillon of Dillon & Murphy discussed with the former pastor of the Church, Charles Plumb, a mutually beneficial arrangement between the City and the Church to allow the construction of street improvements (curb, gutter, sidewalk, paving) along the Kettleman Lane and future Tienda Drive frontages of the Church property. The purpose of this letter is to provide you with information regarding that discussion and reach a formal agreement regarding the street improvements.

Street improvements are normally required when a property is developed. However, in some circumstances where the street alignments front existing developed properties, the City in the past has worked with the property owners to install the street improvements in exchange for the required street right-of-way in order to provide for systematic development of the street.

As you are probably aware, the adjacent parcel to the east is to be developed as a congregate care facility. Development of that parcel will include dedication of right-of-way and the installation of street improvements along Kettleman Lane and an agreement for the installation of street improvements along the future Tienda Drive when adjacent properties develop. The City would like to install street improvements along the Kettleman Lane frontage of the Church property in conjunction with this project. The City will pay for the cost of the improvements if the Church is willing to dedicate the necessary right-of-way (19 feet). In addition, the City is willing to pay for the cost of the street frontage improvements along Tienda Drive when the adjacent properties develop in exchange for the necessary right-of-way in the future street alignment (34 feet).

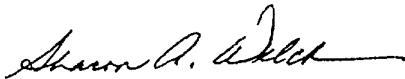
Mr. Plumb indicated that the Church would be interested in participating in this arrangement and the City Council has directed staff to prepare the necessary agreement and easement deed. Enclosed is the original and two copies of an Agreement setting forth the terms discussed above and the original and one copy of a street easement deed for the necessary right-of-way on Kettleman Lane and Tienda

First Church of Nazarene  
January 17, 1997  
Page 2

Drive. The original and one copy of the agreement and the original easement deed need to be signed by the property owner(s), notarized by a Notary Public and returned to our office.

We also understand that you are interested in public sewer service. The City is currently working on plans for a lift station to provide service to your area. We will be contacting you with regard to that project under separate cover in the very near future.

With regard to the street improvements, plans have been submitted for the adjacent development to the east so time is of the essence. Please review, sign and return the enclosed documents as soon as possible. If you have any questions, please contact me at (209) 333-6800 ext. 659 or Richard Prima, City Engineer, at (209) 333-6759.



Sharon A. Welch  
Associate Civil Engineer

Enclosures

cc: City Engineer

WHEN RECORDED, RETURN TO:  
City Clerk  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 1997, by and between FIRST CHURCH OF NAZARENE, hereinafter "Owner", and the CITY OF LODI, a municipal corporation, hereinafter "City".

WITNESSETH:

WHEREAS, Owner is the owner of that certain parcel of land described as

"A portion of the Southeast Quarter of Section 10, Township 3 North, Range 6 East, Mount Diablo Base and Meridian and being more particularly described as the 2.98 acre parcel as filed for record on the Map of Survey on March 23, 1971 in Book 21 of Surveys, at page 26, San Joaquin County Records."

and known as 2223 W. Kettleman Lane (APN 027-040-017); and,

WHEREAS, Owner and City both desire to provide for orderly development of street improvements to Kettleman Lane and Tienda Drive; and,

WHEREAS, the adjacent parcel to the east (APN 027-040-063) is being developed and said development includes street improvements to Kettleman Lane and provisions for future street improvements to Tienda Drive; and

WHEREAS, it is most economical to construct street improvements on Kettleman Lane in conjunction with that project;

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. Owner agrees to dedicate by separate street easement deed, at no cost to the City, the right-of-way necessary for the installation of street improvements on Kettleman Lane and Tienda Drive. Said right-of-way consists of the north 34 feet and south 19 feet of the above described parcel.
2. City agrees, in exchange for the dedication, to construct, or cause to be constructed, and pay for the street frontage improvements (curb, gutter, sidewalk, street lights and paving) along the Kettleman Lane and Tienda Drive frontages of the subject parcel. The construction of the improvements will be done at the time of development of the adjacent undeveloped parcels or at such time as deemed appropriate by the City. OWNER shall cooperate with City in the event City wishes to install all or a portion of these improvements in conjunction with the development of adjacent parcels.

**EXHIBIT B**

- 3. Owner and City agree that utilities in the Tienda Drive right-of-way will be installed by the City or adjacent property developer at the time of installation of street improvements and a reimbursement agreement prepared requiring the Owner to pay their fair share of the utility construction upon connection to the utility.
- 4. At the time of construction of the street improvements on Tienda Drive, owner agrees to provide temporary storm drainage facilities on-site or connect the on-site storm system to the public storm drainage system and pay the appropriate construction costs and fees.
- 5. Owner and City agree that time is of the essence. This agreement may be recorded and shall inure to the benefit of the heirs, successors, or assigns of Owner. In connection therewith, notice may be mailed to Owner at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 6. Herein is set forth the entire agreement between the parties. The performance of these conditions constitutes full performance and shall relieve City of all further obligations or claims.
- 7. In the event either party hereto breaches the terms, conditions and covenants of this Agreement, then, the prevailing party in any suit to enforce this Agreement or restrain the breach thereof, shall in addition to any other relief or damages awarded, be entitled to a reasonable attorney's fee and all costs of suit to be set and determined by any court of competent jurisdiction and added to any judgment obtained.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY OF LODI, a Municipal Corporation

OWNER

By: H. Dixon Flynn, City Manager

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_

Jennifer Perrin, City Clerk

\_\_\_\_\_

APPROVED AS TO FORM:

Randall A. Hays, City Attorney

**RECEIVED**

MAR 31 1997



**CITY OF LODI**

PUBLIC WORKS DEPARTMENT

March 26, 1997

Associated Civil Engineers  
City of Lodi  
221 W. Pine St.  
Lodi, CA 955240

**Re: Offer of Settlement of the Lodi Nazarene Church  
re Proposed Taking by City of Parcels of Land**

**Gentlemen:**

At the recent meeting of the Board of Directors of the Lodi Nazarene Church, it was the unanimous vote of the Board that:

The Church is willing to deed the requested property to the City of Lodi, for the projected street improvements, on the following conditions:

That the City of Lodi pay the present current market value for the requested parcels of property to wit:

1. For the portion of land to be taken from the southerly portion, or front of the church -- along Kettlemen Lane, that the City pay the sum of \$4.00 per square foot. This parcel consists of a strip 250 feet wide and 19 feet in depth for a total of 4,750 square feet. At \$4.00 per square foot, this would fix the fair market value of the portion of the Church property at \$19,000.



## **EXHIBIT C**

2. For that portion of land sought by the City from the northerly portion, or rear of the church -- consisting of a strip 250 feet wide and 34 feet deep, consists of the taking of an additional 8,500 square feet of church property. The fair market value of said property is \$3.00 per square feet -- therefore placing the total value of said property which the City desires at 25,500.

3. In addition thereto, the Church is also requesting severance damages of \$10,000 for the loss of all the parking space presently existing in the front of the church, plus additional noise and short-term gridlock.

4. Also, as part of the settlement, the Church is requesting that Tienda Drive be extended up to the Church's property in order for the Church to construct a driveway in order to eliminate the gridlock as a result of this project. We would need this accomplished within 90 days from the commencement of the project.

5. Also, as part of the settlement, the Church requests an exemption from fees relating to the sewer-lift station.

6. And finally, the Church does not agree to replace the drainage pond existing in the rear portion of the Church property.

This, therefore, fixes the Church's total demand for deeding the desired parcel of land to the City at \$54,500, as well as including lift station fees, and drainage pond exemptions.

The Church, in arriving at the value of its claim, has taken into consideration comparative values which have taken place in the immediate area -- which showed that comparable sales along Kettlemen Lane ranged between \$140,000 to \$150,000 per acre. That

## **EXHIBIT C**

portion of property which have direct frontage to Kettlemen Lane have a fair market value of between \$3.00 to \$4.00 per square foot.

The Church is also aware that the City has secured waivers from owners of certain property along Kettlemen Lane because they stand to see the value of their potential commercial property being enhanced by the property street improvements. Unfortunately, the Church, being a non-profit organization, will, in effect, suffer certain losses or detriments from the proposed improvements, namely:

1. It will lose all parking area which presently exists in the front of the Church: This will create a hardship to some of the elderly members of the Church who have difficulty walking.

2. With the widening of Kettlemen Lane, and the taking of some of the Church's property in the front, which the sanctuary faces, will mean increased noise and sounds during regularly scheduled church services.

3. The increased flow of traffic on Kettlemen Lane will make egress and ingress to Church property more hazardous not to mention the front entrance limitations due to this project.


4. By surrendering 8,500 square feet to the rear of the Church, will again impact parking areas and areas for contemplated church expansion and/or improvements.

We trust the City will not look upon the Church demands as unreasonable or that it is endeavoring to impede the City's plans to improve its overall traffic problems to and from the City. The Church is perfectly happy with the present situation of its facility and property. All it seeks is fair compensation of the property the City

## **EXHIBIT C**

desires to take via your proposed condemnation proceedings if the Church's offer to settle is rejected.

Respectfully submitted,

  
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**STEVE BENJESTORF**  
Chairman of the Trustee Committee  
First Church of the Nazarene, Lodi

pb

CITY COUNCIL

PHILLIP A. PENNINO, Mayor

JACK A. SIEGLOCK

Mayor Pro Tempore

KEITH LAND

STEPHEN J. MANN

DAVID P. WARNER

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 333-6706

FAX (209) 333-6710

October 8, 1997

H. DIXON FLYNN

City Manager

ALICE M. REIMCHE

City Clerk

RANDALL A. HAYS

City Attorney

Lodi Retirement Residence Ltd. Liability Co.

Attn: Bruce D. Thorn

c/o Colson & Colson Construction Co.

2250 McGilchrist St. S. E., Ste. 200

Salem, OR 97302

Fountainhead

Attn: Joseph K. Handel

1826 W. Kettleman Ln., Ste. D

Lodi, CA 95242

Dillon & Murphy Engineering

Attn: Cecil Dillon

P. O. Box 2180

Lodi, CA 95241-2180

First Church of the Nazarene

2223 West Kettleman Lane

Lodi, CA 95242

SUBJECT: Improvement Agreement and Improvement Deferral Agreement for  
Lodi Retirement Residence, 2145 West Kettleman Lane

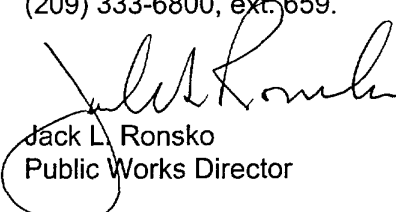
Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, October 15, 1997. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Alice Reimche, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Sharon Welch at (209) 333-6800, ext. 659.



Jack L. Ronsko  
Public Works Director

Enclosure

cc: City Clerk